Supreme Court of the United States.

OCTOBER TERM, 1894.

No. ~~1017~~. 274

BROOKE MACKALL, APPELLANT,

vs.

WESTEL WILLOUGHBY, APPELLEE.

RECORD.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1894

No. 1017.

BROOKE MACKALL, APPELLANT,

vs.

WESTEL WILLOUGHBY, APPELLEE.

Now comes the appellee, by Arthur A. Birney, his solicitor, and moves the Court to vacate the supersedeas allowed in this case by Mr. Justice Morris, associate justice of the Court of Appeals of the District of Columbia, or to declare that said supersedeas be void because he says:

First. That the said justice was without jurisdiction to allow said supersedeas, final decree in said cause by the said Court of Appeals having been rendered January 8, 1895, and no appeal having been allowed therein until April 24, 1895, more than sixty days, Sundays excluded, after such final decree.

Second. Because said supposed supersedeas bond is for an amount much less than the recovery in said cause.

Third. Because the said supersedeas bond was approved by a justice other than the justice who signed the citation in the said cause.

A. A. BIRNEY,
Solicitor for Appellee.

H. E. DAVIS, Esq.,
Solicitor for Brooke Mackall.

SIR: Take notice that the foregoing motion will be presented to the Supreme Court of the United States on Monday next, May 20, 1895, at the opening of the Court.

Very respectfully,

A. A. BIRNEY,
Solicitor for Appellee.

Service acknowledged this 17th May, 1895.

HENRY E. DAVIS.

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the justices of the supreme court of the District of Columbia, Greeting:

Whereas lately, in the supreme court of the District of Columbia, before you or some of you, in a cause between Westel Willoughby, complainant, and Brooke Mackall, The Mutual Fire Insurance Company of the District of Columbia, Samuel C. Wilson, trustee, and Leonard Mackall, trustee, and Oliver T. Thompson, trustee, defendants, equity, No. 12521, wherein the decree of the said supreme court entered in said cause on the 29th day of May, A. D. 1894, is in the following words, viz:

"This cause having come on for consideration by the court upon the original bill of complaint as amended and the cross-bill of the defendant Brooke Mackall and the other pleadings and proceedings and the testimony, and having been argued by counsel and considered by the court, it is this 29th day of May, A. D. 1894, adjudged, ordered, and decreed that each of the said bills be, and it is hereby,

dismissed, but without prejudice to the prosecution of the suit at law now pending in this court between the complainant and the said Brooke Mackall upon the agreement of the 10th day of April, A. D. 1883, mentioned in said original and cross bills.

"W. S. Cox, *J.*"

as by the inspection of the transcript of the record of the said supreme court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal taken by Westel Willoughby, wherein Brooke Mackall was made appellee, agreeably to the act of Congress in such case made and provided, as fully and at large appears;

And whereas in the present term of January, in the year of our Lord one thousand eight hundred and ninety-five, the said cause came on to be heard before the said Court of Appeals on the said transcript of record and was argued by counsel:

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, reversed with costs, and that the said complainant, Westel Willoughby, recover against the said defendant, Brooke Mackall, one hundred and twelve dollars and ten cents for his costs herein expended and have execution therefor; and it is further ordered that this cause be, and the same is hereby, remanded to the said supreme court, with directions to pass a final decree in conformity with the opinion of this court.

January 8, 1895.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause in conformity with the opinion and decree of this court as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Richard H. Alvey, Chief Justice of said Court of Appeals, the 24th day of January, in the year of our Lord one thousand eight hundred and ninety-five.

Costs of Complainant.

Clerk	$31 10
Printing record	81 00
	$112 10

ROBERT WILLETT,
Clerk of the Court of Appeals
of the District of Columbia.

[Endorsed:] Court of Appeals of the District of Columbia, January term, 1895. No. 361. Westel Willoughby, appellant, *vs.* Brooke Mackall. Mandate.

WESTEL WILLOUGHBY, *Appellant*,
vs.
BROOKE MACKALL. } No. 361.

WEDNESDAY, *April* 24, A. D. 1895.

On motion of Mr. Henry E. Davis, attorney for the appellee in the above-entitled cause, it is ordered that an appeal to the Supreme Court of the United States from the decree entered herein by this court on January 8, 1895, be, and the same is hereby, allowed.

Know all men by these presents that we, Brooke Mackall, as principal, and Le Roy Tuttle, Jr., and Henry E. Davis, as sureties, are held and firmly bound unto Westel Willoughby in the full and just sum of one thousand dollars, to be paid to the said Westel Willoughby, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this third day of May, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between the said Westel Willoughby, as appellant, and the said Brooke Mackall, as appellee, the same being numbered 361, a decree was rendered against the said Brooke Mackall, and the said Brooke Mackall having been allowed an appeal to the Supreme Court of the United States to reverse the said decree in the aforesaid suit, and a citation directed to the said Westel Willoughby, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said Brooke Mackall shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

BROOKE MACKALL. [SEAL.]
LE ROY TUTTLE, JR. [SEAL.]
HENRY E. DAVIS. [SEAL.]

Sealed and delivered in the presence of—

____ ____.

Approved and the appeal made a supersedeas by—

M. F. MORRIS,
Associate Justice, Court of Appeals, D. C.

[Endorsed:] No. 361. Westel Willoughby, appellant, *vs.* Brooke Mackall. Bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed May 3, 1895. Robert Willett, clerk.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

WESTEL WILLOUGHBY *vs.* BROOKE MACKALL.	No. 361.

And now comes Westel Willoughby, the appellee in the appeal to the Supreme Court of the United States, and moves the court to rescind the approval and order appearing upon the bond of the appellant, filed in this cause May 3, 1895, which is in the following words, to wit: "Approved and the appeal made a supersedeas by M. F. Morris, associate justice, Court of Appeals, D. C.;" and also, if such motion be not granted, that the words "and the appeal made a supersedeas" may be stricken therefrom or adjudged to be of no effect, on the ground that such approval and order were made without authority of law.

W. WILLOUGHBY,
By A. A. BIRNEY, *Counsel.*

To H. E. DAVIS, Esq.,
Counsel for Appellant.

Please take notice that the above motion will be called up for hearing before the court on Thursday, the 9th day of May, 1895, or as soon thereafter as counsel can be heard.

W. WILLOUGHBY,
By A. A. BIRNEY, *Counsel.*

(Endorsed:) Court of Appeals, D. C., April term, 1895. No. 361. Westel Willoughby, appellant, *vs.* Brooke Mackall. Motion to rescind approval of bond and to rescind order for supersedeas. Court of Appeals, District of Columbia. Filed May 4, 1895. Robert Willett, clerk.

WESTEL WILLOUGHBY, *Appellant*,
vs.
BROOKE MACKALL. } No. 361.

THURSDAY, *May* 9, A. *D.* 1895.

The hearing on the motion to rescind the approval of the bond to the Supreme Court of the United States is assigned for Monday, May 13, 1895.

WESTEL WILLOUGHBY, *Appellant*,
vs.
BROOKE MACKALL. } No. 361.

MONDAY, *May* 13, A. *D.* 1895.

The hearing on the motion of the appellant to rescind the approval of the bond on appeal to the Supreme Court of the United States is re-assigned for May 16, 1895.

UNITED STATES OF AMERICA, *ss*:

To WESTEL WILLOUGHBY, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Brooke Mackall is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this third day of May, in the year of our Lord one thousand eight hundred and ninety-five.

(Signed) R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.